

IN THE UNITED STATES DISTRICT COURT FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

2013 APR 26 A 10:54

JASON JERRARD BOGGS,
Plaintiff,

CLERK *Dale*
SD. DIST. OF GA.

v.

CIVIL ACTION NO.: CV213-042

MIKE LAWSON, Deputy Sheriff,
Defendant.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, who is currently housed at the Glynn County Detention Center in Brunswick, Georgia, filed an action pursuant to 42 U.S.C. § 1983. A detainee proceeding against officers or employees of government entities must comply with the mandates of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915 & 1915A. In determining compliance, the court shall be guided by the longstanding principle that *pro se* pleadings are entitled to liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972); Walker v. Dugger, 860 F.2d 1010, 1011 (11th Cir. 1988).

28 U.S.C § 1915A requires a district court to screen the complaint for cognizable claims before or as soon as possible after docketing. The court must dismiss the complaint or any portion thereof that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune to such relief. 28 U.S.C. § 1915A (b)(1) and (2).

In Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997), the Eleventh Circuit interpreted the language contained in 28 U.S.C. § 1915(e)(2)(B)(ii), which is nearly identical to that contained in the screening provisions at § 1915A(b). As the language of § 1915(e)(2)(B)(ii) closely tracks the language of Federal Rule of Civil Procedure 12(b)(6), the court held that the same standards for determining whether to dismiss for failure to state a claim under Rule 12(b)(6) should be applied to prisoner complaints filed pursuant to § 1915(e)(2)(B)(ii). Mitchell, 112 F.3d at 1490. While the court in Mitchell interpreted § 1915(e), its interpretation guides this Court in applying the identical language of § 1915A.

Plaintiff asserts that he went to speak to Defendant Lawson at the Glynn County Sheriff's Office and that Defendant Lawson made him stay in the office to answer questions about a text Lawson received from his girlfriend. Plaintiff asserts that he was forced to agree with everything Defendant Lawson said because Defendant Lawson threatened to arrest his girlfriend and mother. Plaintiff contends that he was never advised that he had the right to remain silent and that his statements could be used against him. Plaintiff also contends that Defendant Lawson has "been doing racist (sic) things towards [him] because [he is] a sex offender." (Doc. No. 1, p. 6).

The Supreme Court has held:

that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). According to the Heck Court, “when a state prisoner seeks damages in a [civil rights] suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.” Id. at 487. If this is the case, the plaintiff’s complaint “must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” Id. A district court must determine whether “plaintiff’s action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.” Id. (emphasis in original). Plaintiff seeks monetary damages. To have success on his claims, Plaintiff’s conviction—which has yet to occur—would have to be invalidated, which has not occurred. Accordingly, Plaintiff’s claims against Defendant Lawson should be **DISMISSED** for this reason.

Plaintiff also seeks to have the charges against him dropped. When a state detainee challenges the “fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.” Harden v. Pataki, 320 F.3d 1289, 1294 n.6 (11th Cir. 2003) (quoting Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)). Plaintiff fails to state a viable section 1983 claim.

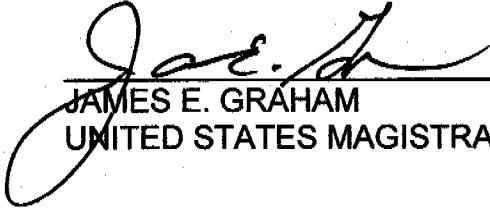
Further, a plaintiff must set forth “a short and plain statement of the claim showing that [he] is entitled to relief.” FED. R. CIV. P. 8(a)(2). “In order to prevail on a civil rights action under § 1983, a plaintiff must show that he or she was deprived of a federal right by a person acting under color of state law.” Griffin v. City of Opa-Locka, 261 F.3d 1295, 1303 (11th Cir. 2001). “[S]tate action requires both an alleged

constitutional deprivation 'caused by the exercise of some right or privilege created by the State or by the rule of conduct imposed by the State or by a person for whom the State is responsible,' and that 'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" Patrick v. Floyd Med. Ctr., 201 F.3d 1313, 1315 (11th Cir. 2000) (emphasis in original) (citation omitted). However, Plaintiff makes no factual allegations supporting any alleged discriminatory behavior by Defendant Lawson.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Plaintiff's Complaint be **DISMISSED** based on his failure to state a claim upon which relief may be granted.

SO REPORTED and RECOMMENDED, this 26th day of April, 2013.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE